

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

BLIEMEISTER'S WOODWORKS,	)	
	)	PCHB NO. 93-7
Appellant,	)	
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
OLYMPIC AIR POLLUTION CONTROL	)	AND ORDER
AUTHORITY,	)	
	)	
Respondent.	)	

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This matter came on for hearing before the Pollution Control Hearings Board on Friday, February 12, 1993, in the Board's offices in Lacey, Washington. In attendance were Board members Annette McGee and Robert Jensen with Administrative Appeals Judge John H. Buckwalter presiding. Proceedings were recorded by Randi R. Hamilton, Certified Shorthand Reporter, of Gene Barker & Associates, Olympia, Washington, and were also tape recorded.

At issue was a \$100 civil penalty imposed on Bliemeister's Woodworks (hereinafter "Bliemeister") by the Olympia Air Pollution Control Authority (hereinafter "OAPCA") for allegedly allowing the emission of odors into the atmosphere.

Appearances were:

Rick Knodel, President and owner of Bliemeister, for  
Bliemeister.

Fred D. Gentry, Attorney, for OAPCA.

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(1)

1 Witnesses were sworn and testified, exhibits were examined, and  
2 arguments of counsel were heard. From these, the Board makes these

3 FINDINGS OF FACT

4 I

5 Kitchen Dick road (the "road") is located in Sequim, Clallam  
6 County, Washington, and runs north and south in the area in question.  
7 Bliemeister is a cabinet shop on 1 1/4 acres on the east side of the  
8 road. The cabinet shop has been located at that site since 1974 and  
9 was originally owned by a Mr. Adams for whom Knodel had worked and  
10 from whom Knodel purchased the building in 1990. The shop is  
11 constructed of steel with sheet rock lining.

12 II

13 Since 1971 Marie and Frank Sayres have lived in a dwelling house  
14 on 20 acres also located on the east side of the road facing west and  
15 approximately 200 feet south of Bliemeister. There are no intervening  
16 buildings. However, the exact relationship between the two buildings  
17 is disputed: Mrs. Sayres testified that the rear of their house is in  
18 an almost direct line with the rear of the Bliemeister shop, while  
19 Knodel testified that the Sayres residence is closer to the road than  
20 Bliemeister and that the rear of the residency is well forward of the  
21 rear of the Bliemeister shop. The prevailing winds are from the  
22 northeast but, at times, also blow from the north or the east.

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1 III

2 Bliemeister, during work weeks which are sometimes seven days and  
3 sometimes around the clock, fabricates cabinets. As part of the  
4 finishing process, the wood is sprayed with a lacquer compound which  
5 causes odorous fumes. In 1976, for the purpose of controlling the  
6 emission of these fumes into the air, Adams installed a system by  
7 which the lacquer fumes were drawn by a fan into a fire box where the  
8 fumes were incinerated before being exhausted into the air through a  
9 smoke stack. The stack is located at the south east corner of the  
10 shop.

11 IV

12 At the time of Knodel's purchase of the building, it appeared  
13 that Adams had not been using the incinerating system. Knodel,  
14 immediately after the purchase, cleaned the system and started using  
15 it whenever spraying was performed except when the amount of spraying  
16 was quite small. In 1991 there was a fire in the system and  
17 Bliemeister purchased a new control system for it. Knodel did not  
18 obtain instructions for the operation or maintenance of the  
19 incinerating system, and no periodic maintenance was performed until  
20 1992.

21 V

22 Mr. and Mrs. Sayres have been bothered by the odor of the lacquer  
23 fumes on various occasions for many years. They testified that,  
24

1 because of the sweet, sickening fumes, Mrs. Sayres has become ill at  
2 various times, including a collapsed lung during the Adams ownership.  
3 Mr. Sayres testified that he was bothered by headaches but, because he  
4 is being treated for allergies, he cannot say that the fumes are the  
5 cause of his headaches. The Sayres' attempts to get corrective action  
6 from Mr. Adams were met by belligerency, but discussions with Knodel  
7 had been more friendly. During one of their discussions in 1991,  
8 Knodel promised the Sayres that he would attempt to find a suitable  
9 water based substitute for the lacquer spray. He testified that he  
10 has not yet been able to find a water based spray which produces an  
11 acceptable quality of finish.

#### 12 VI

13 On October 11, 1992, Mrs. Sayres was picking apples in their  
14 orchard and became ill. Believing that the illness was caused by the  
15 lacquer fumes from Bliemeister, she called James Werner, an inspector  
16 for OAPCA, and, on October 12 and 13 of 1992, Werner visited the  
17 Bliemeister/Sayres site. The Bliemeister incinerator system was not  
18 working at the times of the Inspector's visits, and Mrs. Sayres  
19 testified that she felt sick from the fumes on both those days. There  
20 is no other known source for the odor except from the Bliemeister  
21 operation.

#### 22 VII

23 On December 8, 1992, OAPCA issued a Notice of Civil Penalty  
24

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1 Assessment to Bliemeister for violations of Sections 9.11 and 9.16 of  
2 OAPCA Regulation 1, more specifically for

3 *CONDITION: First Violation. Causing or allowing the*  
4 *emission or generation of an odor which unreasonably*  
5 *interfered with another persons use and enjoyment of their*  
6 *property. Failure to maintain and operate control*  
7 *equipment.*

8 OAPCA assessed a \$100 civil penalty, and a timely appeal was  
9 filed with the Board by Bliemeister.

#### 10 VIII

11 Following the October 12,13 visit by the OAPCA inspector,  
12 Bliemeister initiated logs to maintain a record of daily/weekly  
13 maintenance checks of the incinerator system and also raised the  
14 height of the smoke stack by 3 feet.

#### 15 IX

16 Any Conclusion of Law deemed to be a Finding of Fact is hereby  
17 adopted as such. From these Findings of Fact the Board makes these

#### 18 CONCLUSIONS OF LAW

#### 19 X

20 The Board has jurisdiction over the parties and the subject  
21 matter of this action. RCW's 70.94.431, 43.21B.110.

#### 22 XI

23 The Sayres claim that their illnesses were caused by the lacquer  
24 fumes from Bliemeister. Because of the lack of corroboration by  
25 medical testimony or other medical evidence, we cannot conclude that

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1 their illnesses were caused by the fumes.

2 XII

3 However, from the testimony that the Sayres were subjected to the  
4 fumes, that the fumes were sweet and sickening, and that the fumes  
5 were almost always present, we do conclude that the fumes did  
6 unreasonably interfere with the Sayres' use and enjoyment of their  
7 property.

8 XIII

9 Because Bliemeister did not implement a periodic maintenance  
10 program until after the visit of the OAPCA Inspector, we conclude that  
11 there was a failure to maintain and operate equipment.

12 XIV

13 We conclude that OAPCA was justified in imposing the \$100 penalty  
14 which was assessed by selecting the lower end of a first violation  
15 range of \$50 to \$500. OAPCA Civil Penalty Guidelines, Section 9.11.  
16 We next consider whether that penalty should be mitigated.

17 XV

18 We take note of Bliemeister's steps toward corrective action:  
19 the cleaning and implementation of the incinerator system after  
20 purchase by Knodel, the purchase of a replacement part for the system  
21 after the 1991 fire, an attempt to find suitable water base sprays to  
22 replace the lacquer spray, the initiation of incinerator system  
23 maintenance logs, and the heightening of the smoke stack.

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1 We also note the assurance by OAPCA that the agency will work  
2 closely with Bliemeister to achieve a higher degree of control of  
3 fumes.

4 XVI

5 Against the above, we consider the failure of Bliemeister to  
6 perform maintenance checks on the incinerator system until after the  
7 OAPCA Inspector's visits and the system's inoperative state on the  
8 days of those visits.

9 XVII

10 Balancing the above, we conclude that no mitigation of the  
11 relatively small penalty is justified because of Knodel's negligence  
12 in failing to perform periodic maintenance of the incinerating system  
13 even though he had become familiar with the system while working for  
14 Adams in the 1980's.

15 XVIII

16 Any Finding of Fact deemed to be a Conclusion of Law is hereby  
17 adopted as such. From these Conclusions of Law, the Board enters this  
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1 ORDER

2 THAT the civil penalty of \$100 is affirmed without mitigation.

3 Done this 25th day of February, 1933.

4 POLLUTION CONTROL HEARINGS BOARD

5  
6 Annette S. McGee  
7 ANNETTE S. MCGEE, Member

8  
9 Robert V. Jensen  
10 ROBERT V. JENSEN, Attorney Member

11 John H. Buckwalter  
12 JOHN H. BUCKWALTER  
13 Administrative Appeals Judge,  
Presiding

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